

## **REMARKS/ARGUMENTS**

Reconsideration is respectfully requested of the Office Action of October 31, 2007 relating to the above-identified application. Applicant hereby requests a three-month extension of time to submit this present response, and submits the associated fee for the three-month extension.

### **Rejection under 35 USC § 112**

Claims 1-10 and 18-27 initially stand rejected under 35 USC § 112, with the examiner specifically noting that "Foul-tasting & scent material, critical or essential to the practice of the invention, but not included in the claim(s) is not enabled by the disclosure. .... No example is provided of any specific compound that is recognized as hated by deer, and applicable in the equipment disclosed for use to repel any animal."

In response, the Federal Circuit has determined that "[T]he test of enablement is whether one reasonably skilled in the art could make or use the invention from the disclosures in the patent coupled with information known in the art without undue experimentation." *United States v. Telectronics, Inc.*, 857 F.2d 778, 785, 8 USPQ2d 1217, 1223 (Fed. Cir. 1988). Applicant submits that a person reasonably skilled in the art could make and use the repellant/deterrence system for animals from the disclosures in the application with the information known in the art without undue experimentation. In particular, in the original specification, Applicant provided an example of such scents in paragraph [0026], which provides that "The scents 21 are preferred to be predatory scents known to scare the animal away. An example of such a scent would be mountain lion urine, which is available via the Internet." Thus, contrary to the assertions in the office action, Applicant has provided working examples of the predator scents that may be used in the design described therein. Looking to Exhibit A, which is a copy of the web page from

[www.pestcontro-products.com/urines\\_all.htm](http://www.pestcontro-products.com/urines_all.htm), various predator urines are known to scare animals, such that other embodiments would be well-known to one having ordinary skill in the art. Based on the information provided in the specification and known by one reasonably skilled in the art, Applicant submits that the disclosure is enabling.

### **Rejection under 35 USC § 102**

Claims 1, 3, 5-7 are rejected as being anticipated by Martel 2001, and claims 1, 3, 5, and 6 are rejected as being anticipated by Bennett et al. In response, Applicant notes that neither reference teaches elements of sensing an animal in a predetermined area using a motion detector as defined in independent claim 1. Furthermore, neither reference suggests an apparatus that progresses through a first predetermined sequence for detecting the animals senses as defined in currently amended claim 1 and previous claim 7, nor repeating a second sequence different from the preceding sequence according to the detection of animal in the predetermined area.

For prior art to anticipate a claimed invention under § 102, every element of the claimed invention must be identically disclosed, either expressly or under principals of inherency, in a single reference. Corning Glass Works v. Sumitomo Electric, 9 U.S.P.Q. 2d 1262, 1265 (Fed. Cir. 1989). Applicant submits that since both Martel and Bennett fail to suggest, much less teach, the elements in the amended claims, this rejection should be withdrawn.

### **Rejection under 35 USC § 103**

Claims 1-10 and 18-27 are rejected as being unpatentable over Bennett and Jincks in view of Burman and admissions in the specification. In response, Applicant submits that none of the references cited disclose all of the steps included in the amended claims. Applicant acknowledges that there are devices that will use one or more means for engaging an undesired animals senses. However, none of the references discloses a method for monitoring a

predetermined area, cycling through a series of steps that repel the animal based on (1) touch, (2) sound, (3) sight, (4) smell, and (5) taste, and then repeat the steps in a second order if the motion detector senses an animal in the same area during a predetermined period of time. Although paragraph [0077] of Jincks is cited for the proposition that variation in the application of the sequence of stimuli emission and duration of exposure is controllable, it simply discloses that different switches or sensors can be used to activate a sensing means, and fails to teach the various cycling steps described in amended claims 1 and 18.

Applicants submit that the factors set forth in *Graham v. John Deere Co. of Kansas City*, 383 U.S. 1, 17–18, 148 U.S.P.Q. 459 (1966), indicate that the amended claims in the present application are not obvious. In particular, the Supreme Court noted in *Graham* that the factual inquiries are (1) determining the scope and content of the prior art; (2) ascertaining the differences between the prior art and the claims in issue; (3) resolving the level of ordinary skill in the pertinent art; and (4) evaluating any objective evidence of nonobviousness. In applying this analysis, the Federal Circuit has stated that “there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.” *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR International Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385, 1396 (2007) (quoting Federal Circuit statement with approval). From the analysis in the Office Action, Applicant believes that the rationale provided by the Examiner in rejecting these claims is through combining prior art elements according to known methods to yield predictable results. However, to reject a claim based on this rationale, the Office must articulate the following:

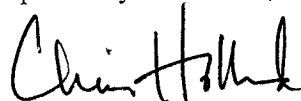
- (1) a finding that the prior art included each element claimed, although not necessarily in a single prior art reference, with the only difference between the claimed invention and the prior art being the lack of actual combination of the elements in a single prior art reference;

- (2) a finding that one of ordinary skill in the art could have combined the elements as claimed by known methods, and that in combination, each element merely would have performed the same function as it did separately;
- (3) a finding that one of ordinary skill in the art would have recognized that the results of the combination were predictable; and
- (4) whatever additional findings based on the Graham factual inquiries may be necessary, in view of the facts of the case under consideration, to explain a conclusion of obviousness.

See Manual of Patent Examining Procedure ("MPEP"), § 2143(A), Rev. 6, Sept. 2007. Based on the analysis above, neither of the first two findings may be made with respect to the claimed design. Initially, there is no finding that the prior art included each element of independent claims 1 and 18; in particular, none of the references included the elements of continuously monitoring a predetermined area and repeating five steps for alerting animals in varying sequences. Additionally, Applicant asserts that one of ordinary skill in the art would not combine the cited references to achieve the steps recited in independent claims 1 and 18.

In view of the Applicant's remarks provided above, Applicant respectfully submits that claims 1 and 18, and those depending therefrom, are in condition for allowance. Accordingly, Applicant respectfully requests that the Examiner withdraw the previous rejections and that Notice of Allowability be issued.

Respectfully submitted,



Christopher A. Holland  
Reg. No. 46,316

Dated: April 30, 2008  
SMITH, GAMBRELL & RUSSELL, LLP  
1230 Peachtree Street, N.E.  
Suite 3100, Promenade II  
Atlanta, GA 30309-3592  
TEL: (404) 815-3770  
FAX: (404) 685-7070

## EXHIBIT A

# 100% Predator Urines

## All Products of Urine

### Product List / Secure Online Ordering



#### 100% Real COYOTE URINE

In the wild, Coyote urine is a powerful communicator. It attracts a coyote to its mate. It helps prey like deer and other animals tell whether an area is safe or dangerous. It marks a coyote's territory and signals his dominance in the pack. Hunters, trappers, and others who interact with wild animals have long understood how the selective uses of animal urines can trigger instinctive reactions. Now you can too. This product is 100% real coyote urine and creates the illusion that coyotes are present. **Deer, raccoon, and opossum** react instinctively to the fear of this predator.

#### FREE SHIPPING

Available in 8 oz, 32 oz, 8 oz Combo Pak (shown) and Shake N' Go Granules

[Go Here for purchase options](#)

#### 100% Real FOX URINE

In the wild, Fox urine is a powerful communicator. It attracts a fox to its mate. It helps prey like rabbit, groundhogs, woodchuck, skunks, squirrels, chipmunks and other varmints tell whether an area is safe or dangerous. It marks a fox's territory and signals his dominance. Hunters, trappers, and others who interact with wild animals have long understood how the selective uses of animal urines can trigger instinctive reactions. Now you can too. This product is 100% real fox urine and makes **varmints like rabbits, skunks, squirrels, chipmunks, woodchucks & groundhogs** think foxes are around. They react instinctively to their fear of this predator.

#### FREE SHIPPING

Available in 8 & 32 oz, 8 oz Combo Pak, (shown) and Granules

[Go Here for purchase options](#)



#### 100% Real BOBCAT URINE

In the wild, Bobcat urine is a powerful communicator. It attracts a bobcat to its mate. It helps prey like **mice, moles, rats, voles** and other rodents tell whether an area is safe or dangerous. It marks a bobcat's territory and signals his dominance. Hunters, trappers, and others who interact with wild animals have long understood how the selective uses of animal urines can trigger instinctive reactions. Now you can too. This product is 100% real wild bobcat urine and makes varmints like mice and moles think bobcats are present. They react instinctively to their fear of the predator.

#### FREE SHIPPING

Available in 8 & 32 oz, 8 oz Combo Pak, (shown) and Granules

[Go Here for purchase options](#)

#### 100% Real WOLF URINE

In the wild, Wolf urine is a powerful communicator. It attracts a wolf to its mate. It helps prey like moose, mule deer, and other animals tell whether an area is safe or dangerous. It marks a wolf's territory and signals his dominance. Hunters, trappers, and others who interact with wild animals have long understood how the selective uses of animal urines can trigger instinctive reactions. Now you can too. This product is 100% real wolf urine and makes large prey like **moose, elk, deer, coyote, bear and even camels** think vicious wolves are nearby.

#### FREE SHIPPING



Available in 8 oz, 32 oz

[Go Here for purchase options](#)



### 100% Real MOUNTAIN LION URINE

In the wild, Lion urine is a powerful communicator. It attracts a lion to its mate. It helps prey like armadillo, and wild boar tell whether an area is safe or dangerous. It marks a lion's territory and signals his dominance. Hunters, trappers, and others who interact with wild animals have long understood how the selective uses of animal urines can trigger instinctive reactions. Now you can too. This product is 100% real lion urine and makes prey like **armadillo, elk, wild boar, and coyotes** think vicious mountain lions are nearby.

**FREE SHIPPING**

Available in 8 oz, 32 oz

[Go Here for purchase options](#)

### FREE SHIPPING Shake N' Go Granules



**Coyote**  
[Buy Now](#)

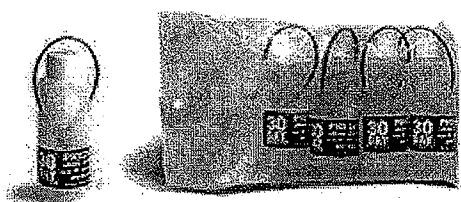
**Fox**  
[Buy Now](#)

**Bobcat**  
[Buy Now](#)

This product is the same 100% Predator Urine in dry granular form and is used for effective wide area coverage. Comes in 16 oz. shakers.

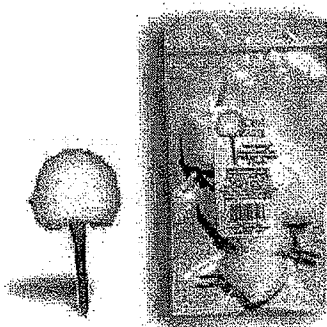
**30 Day Dispensers**  
**FREE SHIPPING**





These handy hanging dispensers are great for long-term usage without the hassle. Fill them with the appropriate Predator Urine, hang them from a tree, bush, fence, or stake every ten to twenty feet and forget them...they will last a month or more, then refill.

**Purchase Singles** or purchase at any other page  
or  
**Case of 48** or purchase at any other page

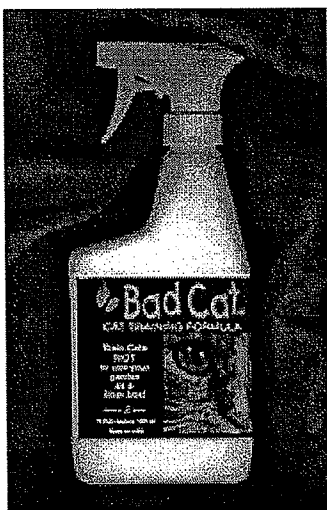


#### **Scent Darts FREE SHIPPING**

These convenient cotton filled darts allow effective "wicking" of urines into the air. These are cotton balls attached to golf tees. Simply push in the ground and space 10-12 feet apart and saturate with urine. Re-apply after rain or snow.

(Sold in 6 packs)

**Buy Now** or purchase at any other page



#### **BAD CAT**

Ever since cats have been pets they have liked to use gardens as litter boxes. But, nothing is more irritating than digging your fingers into your rich soil only to find an unpleasant surprise left by a cat. BadCat is a unique all-natural formula that trains cats that your garden is not a good place to go potty. It is pleasant smelling and contains a proprietary formula that completely camouflages the scent of cat waste and encourages cats to toilet elsewhere. You can now take control of your yard and garden. It's really simple: BadCat says "no" and it really works.

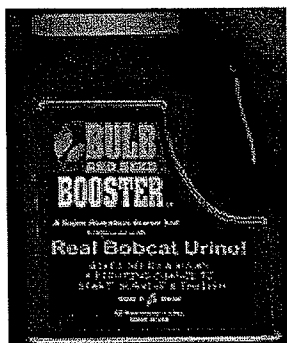
**FREE SHIPPING**

91800 16oz **\$21.99**

**Order Now** 

**BULB & SEED BOOSTER** - Gives bulbs and seeds a fighting chance to survive with Bobcat Urine.

When you live and work in Maine, you can't help but run into some pretty colorful people who give real meaning to the concept of Yankee ingenuity. One of these people is a farmer from the little village of Brooks who told us that for years he had been mixing bobcat urine with a secret soil recipe that he used for planting his bulbs each fall. He told us that when he added the bobcat urine, more of the bulbs survived the winter and produced hardier and faster growing

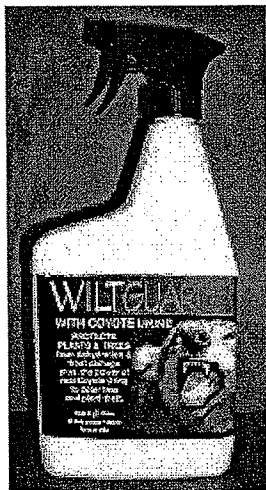


plants. Go figure! Well, we tried it out and found to our surprise it really does work. We don't know exactly why, but bulbs thrive in this stuff. So, we've mixed up some and we call it Bulb & Seed Starter with Bobcat Urine and now you can use it too.

94050 1 Gal. \$29.69

**FREE SHIPPING**

**Order Now** 



**WiltGuard**

Plant protection with Coyote Urine

Item # 93025

**FREE SHIPPING**

32oz \$21.99

**Order Now** 

[\(Other Pests Problems\)](#) [\(Contact us\)](#) [\(Warranties/Return Policy\)](#) [\(Privacy Policy\)](#) [\(Back to top\)](#)



**For Customer Service Dial 1.901.365.2847**

**For Orders Dial Toll Free 1.877.800.6884**

**Pest Control Solutions**

**2938 Ridgeway**

**Memphis, TN. 38115**

© 2002 - 2007 PestControl-Products.com